

REMARKS

This Reply and Amendment is intended to be completely responsive to the Office Action dated January 7, 2003.

Claims

Claims 39-76 have stand rejected. On entry of this Reply and Amendment, Claims 41-42 and 44-76 will be amended for clarity. Accordingly, Claims 39-76 are pending in this Application.

No new matter has been added.

On page 2 of the Office Action, the Examiner noted that misnumbered Claims 42-75 have been renumbered as Claims 43-76. Claims 44-53, 55-64, and 66-76 have been amended to clarify the dependencies of these claims in view of the renumbering of Claims 43-76.

A full set of claims is provided above, with changes shown by underlining additions and striking-through deletions in accordance with the U.S. Patent and Trademark Office "Amendments in a Revised Format" Notice.

Claim Rejections - 35 U.S.C. § 112

On page 2 of the Office Action, Claims 47, 50, 52, 53, and 65-76 were rejected under 35 U.S.C. 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to Claims 47, 50, 52, 53, 61, and 76, the Examiner stated:

[T]he terms “less than about...”, “at least about...” and “greater than about...” are indefinite when there is nothing in the record to provide any indication as to what range of specific activity is covered by the term “about”. See *Amgen, Inc. v. Chugai Pharmaceutical Co.* 18 USPQ2d 1016.

The Applicant's use of the term “about” is intended to acknowledge that the claimed subject matter would be understood by one of skill in the art to include

insubstantial variations from the specific numeric values provided. Such variations are intended to be within the literal scope of the claims as presented.

As recited in Claims 47, 50, 52, 53, 61, and 76, the term "about" is intended by Applicants to have a clear meaning in harmony with the commonly understood or general meaning such that one of skill in the art would be reasonably apprised of the scope of the invention as recited in Claims 47, 50, 52, 53, 61, and 76 in light of the specification. Accordingly, the Applicant requests withdrawal of the rejection of Claims 47, 50, 52, 53, 61, and 76 under 35 U.S.C. § 112 ¶ 2.

With regard to Claims 65-76, the Examiner stated:

[W]hile applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPO 482 (CCPA 1947). The term "coating means" in claims 65-76 is used by the claim to mean "a thin layer," while the accepted meaning is "an apparatus to provide a thin layer, i.e. roller, brush, sprayer, etc."

Claims 65, 69, and 73 have been amended to replace the term "means for coating" with the term "layer." Claims 72 and 75-76 have been amended to replace the term "coating" with the term "layer." Accordingly, the Applicant requests withdrawal of the rejection of Claims 65-76 under 35 U.S.C. § 112 ¶ 2.

Claim Rejections - 35 U.S.C. § 102(b)

On page 3 of the Office Action, the Examiner rejected Claims 39-76 as being anticipated by U.S. Patent No. 5,858,575 ("Chen") under 35 U.S.C. § 102(b). The Examiner stated (emphasis in original):

Chen discloses lead-acid battery grids formed by immersing a lead-calcium alloy substrate in a melt of one of tin, lead-antimony, lead-silver and lead-tin alloys. Because the substrate may be dipped into a melt after it has been formed into a grid, substantially all the surfaces of the network/grid will be coated. (Note Chen, column 2, lines 18-19 and column 6, lines 26-30.) . . .

With regards to claim 54, the recitation of "a plurality of apertures stamped..." is interpreted as a product by

process limitation. Without a showing of criticality, the means by which an aperture is formed is not considered to change the structure of the aperture. The patentability of a product is independent of how it was made. The burden is on applicants to show product differences in product by process claims. See Ex parte Jungfer 18 USPO 1796, 1800 (BPAI 1991); Bristol-Myers Co. v. U.S. International Trade Commission 15 USPQ 2d 1258 (Fed. Cir. 1989); In re Thorpe 227 USPQ 964 (Fed. Cir. 1985); and In re Best 195 USPO 430 (CCPA 1977). . . .

With regards to claims 65-72. Chen discloses battery grids having a substrate with a plurality of wire elements forming spaced apart apertures and frame elements at the top and bottom of the grid. (See Figure 1.) The grid is pasted with active material; obviously the grid wires support the active material. (Column 6, lines 32-34.) The substrate is coated by immersing it in a melt of tin, lead-antimony, lead-silver or lead-tin. (Note Chen, column 2, lines 18-19 and column 6, lines 26-30.) The coating is interpreted as a "means for coating". As shown in Figures 2-5, the grids include planar surfaces having a coating.

Claims 39, 54, and 65 are in independent form. Claims 40-53 depend from Claim 39. Claims 55-64 depend from Claim 54. Claims 66-76 depend from Claim 65.

Chen does not identically disclose the combination of elements recited in independent Claims 39, 54, and 65. Chen relates to "hot dipped Pb-Ca grids for lead-acid batteries" and shows an "expanded battery grid" comprising "a plurality of grid wires" that are "interconnected by a plurality of nodes."

Claim 39 recites a combination including, among other elements, a "network comprising a plurality of spaced apart wire elements, each wire element having opposed ends" with "at least a portion of the wire elements having a first transverse cross-section taken at a position intermediate the opposed ends of the wire element and a second transverse cross-section taken at one of the opposed ends of the wire element," which is not identically disclosed in Chen. Claim 54 (as amended) recites a combination including, among other elements "a plurality of spaced apart wires having a plurality of surfaces, at least one of the plurality of spaced apart wires having a substantially rectangular cross-section at a first location and a non-rectangular cross-section at a second location," which is not identically disclosed in Chen. Claim 65 (as

amended) recites a combination including, among other elements, "means for supporting an active material" that "includes at least one wire element having a generally rectangular cross-sectional shape at a first location and a non-rectangular cross-sectional shape at a second location," which is not identically disclosed in Chen.

Accordingly, Claims 39, 54, and 65 (and corresponding dependent Claims 40-53, 55-64, and 66-76) are not anticipated by Chen under 35 U.S.C. § 102(b) and are patentable.

* * *

It is submitted that each outstanding objection and rejection to the Application has been overcome, and that the Application is in a condition for allowance. Claims 39-76 are now pending in this Application. The Applicants request favorable reconsideration and allowance of all pending Claims 39-76.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

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